
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GRACE MANCILLA,
APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.,
APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF AND APPENDIX FOR APPELLEES

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Washington, D.C. 20530.

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Statutes:

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21173

GRACE MANCILLA,
 APPELLANT
 v.
UNITED STATES OF AMERICA, ET AL.,
 APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF AND APPENDIX FOR APPELLEES

JURISDICTIONAL STATEMENT

This is an appeal from an order of dismissal and summary judgment in favor of the appellees, the United States of America and the members of the Civil Service Commission. The order in question was entered by the District Court for the Northern District of California on March 18, 1966 (R. 60-61).

Appellant apparently is invoking this Court's jurisdiction under 28 U.S.C. 1291.

STATUTE INVOLVED

The Lloyd-LaFollette Act, 37 Stat. 555, 5 U.S.C.
652(a) provides:^{1/}

1/ Throughout this brief, references to title 5 of the United States Code are to the 1964 edition. By Public Law 89-554, approved September 6, 1966, 80 Stat. 378, title 5 was recodified. 5 U.S.C. 652(a) is now set forth at 5 U.S.C. 5592. The recodification makes no substantive change affecting this case.

Removal without pay from classified civil service --

(a) Only for cause; notice; copy of charges, time to answer; examination; record; persons exempt

No person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges, with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for removal or suspension without pay, and the order of removal or suspension without pay shall be made a part of the records of the proper department or agency, as shall also the reasons for reduction in grade or compensation; and copies of the same shall be furnished, upon request, to the person affected and to the Civil Service Commission. This subsection shall apply to a person within the purview of section 863 of this title, only if he so elects.

STATEMENT OF THE CASE

1. The Administrative Proceedings.

Appellant Grace C. Mancilla was a civilian employee of the Department of the Army, employed as a G.S.-3 stock control clerk at the Defense Subsistence Supply Center in Alameda, California (R. 15-16). On August 23, 1963, she was notified that it was proposed to remove her from her position at the close of business September 30, 1963 on

the grounds of "Insubordination (refusal to obey orders and impertinence), creating disturbances among fellow employees, resulting in an adverse affect upon morale, production and maintenance of proper discipline" and "inefficiency and unsatisfactory performance of your duties" (R. 16-20). This notice cited ten specifications in support of the charges (R. 16-20). The appellant was informed that she had ten days in which she could answer the charges personally and/or in writing and could submit affidavits (R. 20).

Appellant responded to the charges and submitted statements of character witnesses (Exh. C-6(a) through C-6(m)). However, she was later informed by the Chief of the Civilian Personnel office that the charges against her were fully supported by the evidence, and that she would be removed on September 30, 1963 (Exh. C-6, p. 2, App. 2a)^{2/}. At the same time, appellant was informed that she either could appeal under the Defense Supply Agency's Grievance Procedure or could appeal to the United States Civil Service Commission.^{3/} (App. 4a).

Appellant, represented by counsel, initiated an appeal

2/ Pertinent portions of the Exhibits attached to the Motion For Summary Judgment are set forth in the Appendix, *infra*, 1a-35a, to this brief, referred to herein as "App." "R" references are to the reproduced record on appeal.

3/ Section 14 of the Veterans' Preference Act, 5 U.S.C. 863, now 5 U.S.C. 7701 was made applicable to non-veteran civilian employees by Executive Order 10988, 27 Fed. Reg. 551.

under the Defense Supply Agency's Grievance Procedure (Exh. C-1) but later withdrew that appeal and appealed instead to the Civil Service Commission (Exh. C-2)

In a letter dated October 22, 1963, appellant's attorney requested a hearing (Exh. E, App. 4a-5a). On November 5, 1963, she wrote the Civil Service Commission requesting the date of the hearing "so that we can give the list of persons to you we wish to have subpoenaed [sic] in behalf of Miss Mancilla." (Exh. F., App. 6a). By letter dated November 6, 1963, the Civil Service Commission advised counsel that "no arrangements have been undertaken with regard to a hearing" (Exh. G, App. 7a). The Commission further informed appellant's counsel (Exh. G, App. 7a):

The Commission does not have subpoena power, but if a hearing is requested by the appellant, the agency will be invited to participate. However, it will be the responsibility of the parties to the appeal to make arrangements for the appearances of any witnesses whose presence they desire.

By letter of November 14, 1963, appellant's counsel informed the Commission that they were unaware of the Commission's lack of subpoena power (Exh. I, App. 8a-9a). Counsel went on to state that she wanted documents subpoenaed and "We will provide you with a list of persons we desire to have available, and will object to any affidavits being considered by the Commission signed by persons we have not been given the opportunity to cross-examine" (Exh. I, App. 9a). In response,

the Commission pointed out on November 20, 1963, that the Commission does not have subpoena power and cannot compel the attendance of any witnesses at the hearing which it holds upon the appeal." (Exh. K, App. 11a).

On December 2, 1963, the appellant examined all of the affidavits of her fellow workers in the investigation and requested a formal hearing (Exh. L, App. 12a).

On December 5, 1963, the Civil Service Commission informed the appellant and her counsel that the hearing was scheduled for Monday, December 16, 1963. (Exh. M., App. 13a). The Commission also reminded appellant that (Exh. M, App. 13a):

* * * the Commission cannot require the attendance of any witnesses at its hearing, * * *. It is suggested, therefore, that since the responsibility for presenting witnesses at the hearing rests upon the parties to the appeal, any request that you may have for the agency to present particular witnesses should be submitted to the Personnel Office at the Defense Alameda Facility.

A hearing was held before a hearing officer of the Civil Service Commission, San Francisco Region. The appellant presented a former co-worker as witness. The agency presented Mrs. Jones, the appellant's supervisor, who had initiated the proceedings. The appellant, through her counsel, cross-examined Mrs. Jones (Exh. O-1, App. 20a-36a).

The Commission, on January 3, 1964 ruled that none of appellant's procedural rights had been violated, that her

removal from Government employment was warranted, and that the removal was effected for the purpose of promoting the efficiency of the service (Exh. O, App. 19a) Appellant then appealed to the Civil Service Commission's Board of Appeals and Review, which affirmed the decision of the San Francisco Regional Office (Exh. R, App. 37a-39a, R. 23-25).

2. The Proceedings in the District Court.

Mrs. Mancilla then filed this action for judicial review (R. 15-28). On the motion to dismiss filed on behalf of the United States and on the motion for summary judgment filed on behalf of the individual Civil Service Commissioners (R. 46-59 and Exhibits attached thereto), the district court dismissed the complaint against the United States for want of jurisdiction and granted summary judgment in favor of the other appellees (R. 60-61). This appeal was then taken.

ARGUMENT

APPELLANT'S REMOVAL FROM HER JOB
WAS IN COMPLIANCE WITH THE REQUIRED
PROCEDURES OF THE LLOYD-LAFOLLETTE
ACT AND THE CIVIL SERVICE COMMISSION
REGULATIONS.

As this Court has repeatedly recognized, the function of reviewing courts in cases involving the removal of Federal employees is limited to insuring compliance with the procedures prescribed by federal law. Seebach v. Cullen, 338 F.2d 663(C.A. 9) certiorari denied 380 U.S. 972,

933 (C.A. 9) certiorari denied 382 U.S. 938. There can be no real doubt that there was full compliance with all required procedural steps in the present case.^{4/}

Indeed, appellant's principal argument to the contrary is that she was "tricked into believing" that the Civil Service Commission would make arrangements for her witnesses to be present and that only on the day of the hearing did she first discover that no arrangements had been made for her witnesses (Brief, p. 2, 4). However, the record clearly refutes appellant's assertions. As pointed out above, the Civil Service Commission made it clear to the appellant and her counsel in letters of November 6, 1963 (Exh. G, App. 7a), November 20, 1963 (Exh. K, App. 11a), and December 5, 1963 (Exh. M, App. 13a), far in advance of the hearing scheduled for Monday December 16, 1963, that the Civil Service Commission did not have subpoena power and it was "the responsibility of the parties to the appeal to make arrangements for the appearances of any witnesses whose presence they desire." (Ibid).

Thus it is clear that appellant was in no way misled. And it is equally clear that the absence of the subpoena power does not violate the federal employee's due process rights. Jenkins v. Macy, 357 F.2d 62, 68 (CA. 8); Brown v.

^{4/} The district court also correctly dismissed the complaint as against the United States (R. 60), because the United States was neither a suable party nor the proper defendant in this case. Blackmar v. Guerre, 342 U.S. 512, 515; McEachern v. United States, 321 F.2d 31, 33 (C.A. 4).

Zuckert, 349 F.2d 461, 463-64 (C.A. 7) certiorari denied 382 U.S. 998.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

BAREFOOT SANDERS,
Assistant Attorney General,

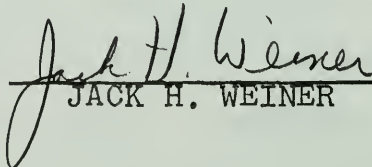
CECIL F. POOLE,
United States Attorney,

MORTON HOLLANDER,
JACK H. WEINER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

MARCH 1967

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.



JACK H. WEINER

A P P E N D I X

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ALAMEDA ANNEX
SHARPE ARMY DEPOT
2155 WEBSTER STREET
ALAMEDA, CALIFORNIA

SSMSH-OAACP

12 September 1963

SUBJECT: Decision: Removal From the Position of Stock Control Clerk, GS-2040-03, \$4580.00 Per Annum

TO: Miss Grace G. Mancilla
Headquarters, Oakland Region, DSSC
Distribution Division, Receiving Branch
2155 Webster Street
Alameda, California

* * *

I ACKNOWLEDGE RECEIPT OF LETTER SUBJECT: DECISION: REMOVAL FROM THE POSITION OF STOCK CONTROL CLERK, GS-2040-03, \$4580.00 PER ANNUM

13 September 1963

Date

GRACE G. MANCILLA

* * *

2. Reference d. informed you of the proposed removal from your position at the close of business 30 September 1963 as Stock Control Clerk, GS-2040-03, \$4580.00 per annum.

3. Full consideration has been given to the information contained in your letters and memos, references e. through q., as well as your oral presentations of 27 and 30 August 1963. The evidence available fully supports the following:

CHARGE 1 INSUBORDINATION, Specifications a., b., and c.

CHARGE 2 INEFFICIENCY, POOR WORK PERFORMANCE AND PRODUCTION. Specification a., b., c., d., e., f., and g. The facts present warrant your removal to promote the efficiency of the service. It is the decision, therefore, that you be removed on 30 September 1963.

4. You have a right in compliance with Section VII, paragraph 7-265, Grievances and Appeals, Defense Supply Agency, Defense Subsistence Supply Center Operating Manual, to submit an appeal personally and in writing to the Commanding Officer,

R. H. Smith, Colonel, USA, of Headquarters, Oakland Region, DSSC, 2155 Webster Street, Alameda, California. Your request for an appeal will be accepted anytime from the date of your receipt of this notice, but not later than 10 calendar days after the effective date of the adverse action. The procedure for filing an appeal will be explained to you by Mr. R. J. Lindsay, Chief, Civilian Personnel Officer, or Miss Josephine Goulart, Chief, Employee Utilization Function in the Civilian Personnel Office.

5. You also have a right to appeal to the Director, San Francisco Region, U. S. Civil Service Commission, 630 Sansome Street, San Francisco 11, California. If you elect to appeal first to the Commission within the time limits specified, you forfeit your right to appeal under the Defense Supply Agency, Defense Subsistence Supply Center appeals system. An appeal may not be processed currently by the Commission under the Commission's regulations and by this activity under the Defense Supply Agency, Defense Subsistence Supply Center appeals system. In order to be considered, any appeal to the Civil Service Commission must:

a. Be in writing

b. Set forth your reasons for appealing with offer of proof and such pertinent documents as you are able to submit, and

c. Be submitted no later than 10 calendar days after the effective date of the adverse (separation) action,

6. The decision of the Commanding Officer, Headquarters, Oakland Region, Defense Subsistence Supply Center, on an appeal of an adverse action will be reviewed, upon your request, by the Commander, Defense Subsistence Supply Center, 226 West Jackson Boulevard, Chicago 6, Illinois. The same decision may be appealed to the Civil Service Commission, but NOT to both the Civil Service Commission and the Commander, Defense Subsistence Supply Center. The decision of the Commander, Defense Subsistence Supply Center, on an appeal submitted to him, may not be appealed to the Civil Service Commission.

FOR THE COMMANDING OFFICER:

R. J. LINDSAY
Chief,
Civilian Personnel Office

EXHIBIT E

Law Offices of
MOLLY H. MINUDRI
210 Post Street, Suite 1114
San Francisco, 8, California
EXbrook 2-0424

October 22, 1963

United States Civil Service Commission
San Francisco Region
630 Sansome Street
San Francisco 11, California

Attention: Mr. John F. Jackson, Appeals Examiner

Re: Grace C. Mancilla
Your Ref: SF:WGT:mlr
October 7, 1963

Gentlemen:

With reference to your letter of October 7, 1963, and your further letter of October 15, 1963, the following is the information and evidence which Mrs. Grace Mancilla wishes

considered in her appeal:

1. Her Civil Service Record of approximately 15 years with the United States Government.
2. A check into purported errors of other employees making entries in the records handled by Mrs. Mancilla which were wrongfully charged to Mrs. Mancilla.
3. A review of the work load of the desk assignment of Mrs. Mancilla.
4. An investigation into the false charge that during an argument Mrs. Mancilla struck Mrs. Ruth Jones, her immediate supervisor.
5. Personnel Record of applications of Mrs. Mancilla for transfers to positions in other Departments.
6. Efficiency reports of Mrs. Grace Mancilla.

We wish to have copies furnished to us of the affidavits which we are informed are in the personnel file from persons in the office of Mrs. Jones and Mrs. Mancilla regarding the incident leading to the dismissal of Mrs. Mancilla.

Mrs. Mancilla will withhold her statement until the time of the hearing, at which time she wishes to tell her story to the hearing officer, hear the story of Mrs. Ruth Jones and other witnesses in her behalf, and give us the opportunity of cross-examination

If there is any further information that your investigator would require, please have him get in touch with us.

Yours very truly,

MOLLY H. MINUDRI

EXHIBIT F

Law Offices Of
MOLLY H. MINUDRI
210 Post Street, Suite 1114
San Francisco, 8, California
EXbrooke 2-0424

November 5, 1963

United States Civil Service Commission
San Francisco Region
630 Sansome Street
San Francisco 11, California

Attention: Mr. John F. Jackson - Appeals Examiner

Re: Grace C. Mancilla
Your Ref: SF:WGT:Mlr
October 7, 1963

Gentlemen:

We wrote you on October 22, 1963, concerning the above captioned matter and would like to know the next step in the proceedings.

We have been informed, and this may be incorrect, that certain persons have been subpoenaed to appear at the Grace Mancilla hearing. If this is true, we believe that we should be advised of the date, so that we can give the list of persons to you we wish to have subpoenaed in behalf of Miss Mancilla.

May we hear from you?

Yours very truly,

MOLLY H. MINUDRI

EXHIBIT G

Mrs. Molly H. Minudri
210 Post Street, Suite 114
San Francisco, California 94108

Dear Mrs. Minudri:

This acknowledges your letter of November 5, 1963, in behalf of Mrs. Grace C. Mancilla. You asked the question as to the

next step in the order of the proceedings. Please refer to our letter of October 7 in which there was described the various steps applicable to our processing of the appeal. It was pointed out that initial investigation would be conducted through correspondence with the appellant and the agency concerned, and that in this regard Mrs. Mancilla should submit the information and evidence which she wished to have considered in her case. We further pointed out that statements submitted by Mrs. Mancilla or by others in her behalf who have knowledge of her case should be notarized. Although, at your request the time period for submitting this evidence was extended, no evidence has been submitted by Mrs. Mancilla. In fact, the basis for her appeal has not been furnished this office.

As soon as the correspondence phase has been completed, the appeal file will be presented for review by Mrs. Mancilla and you, and at that time the appellant will be provided opportunity to furnish any further evidence which she wishes to have considered, and to state her wishes with regard to a hearing.

With respect to the second paragraph of your letter of November 5, you are advised that no arrangements have been undertaken with regard to a hearing. The Commission does not have subpoena power, but if a hearing is requested by the appellant, the agency will be invited to participate. However, it will be the responsibility of the parties to the appeal to make arrangements for the appearance of any witnesses whose presence they desire. In view of the lapse of time since the appeal was filed, the information and evidence which Mrs. Mancilla wishes us to consider

in her appeal should be furnished to this office not later than November 12, 1963.

FOR THE DIRECTOR

Sincerely yours,

John F. Jackson

EXHIBIT I

Law Offices of
MOLLY H. MINUDRI
210 Post Street, Suite 1114
San Francisco 8, California
EXbrooke 2-0424

November 14, 1963

United States Civil Service Commission
San Francisco Region
630 Sansome Street
San Francisco 11, California

Attention: Mr. John F. Jackson, Appeals Examiner

Re: Grace C. Mancilla
Your Ref: SF:WGT:mlr
October 7, 1963

Gentlemen:

This is in reference to our telephone conversation of Tuesday, November 12, 1963, concerning the above captioned.

We were unaware that you no longer had an investigator who looked into the matters referred to in our letter of October 22, 1963, and we were also unaware of your lack of power of subpoena.

In order to present our case for Mrs. Mancilla it is necessary that we have the records of the work load assignment of the desk. Can we subpoena this?

We believe that the personnel record of Mrs. Mancilla will be available at the time of the hearing. Is this true? Will it contain all matters pertaining to her civil service

employment? We wish the record of her efficiency reports and requests for transfers.

We believe that the case will turn on the question of the truth of the reports of Mrs. Ruth Jones, and this can only be brought out by a hearing and cross-examination as to the events on the day of the incident leading to Mrs. Mancilla's dismissal.

We will provide you with a list of person we desire to have available, and will object to any affidavits being considered by the Commission signed by persons we have not been given the opportunity to cross-examine.

Will you advise us when the file you mentioned over the telephone is available, so that Miss Mancilla and I can make an appointment for the purpose of inspection. I believe that we can then be in a position to prepare our defense and refutation.

We were unable to see the entire file in the personnel office of her agency. We were not allowed to see affidavits submitted against her. That is the reason we abandoned the grievance and appealed to the Civil Service Commission, where we trust we will be treated honorably and given the proper consideration.

Awaiting to hear from you,

Yours very truly,

MOLLY H. MINUDRI

EXHIBIT J

DEFENSE ALAMEDA FACILITY
HEADQUARTERS, OAKLAND REGION
DEFENSE SUBSISTENCE SUPPLY CENTER
2155 Webster Street
Alameda, California

19 November

SUBJECT: Removal - Miss Grace G. Mancilla

Director
San Francisco Region
U.S. Civil Service Commission
ATTN: Appeals Examiner
630 Sansome Street
San Francisco 11, California

1. The following additional information is submitted concerning the evidence upon which the Chief, Civilian Personnel Office, Defense Alameda Facility relied to support the removal charges against Miss Grace G. Mancilla.
2. Inclosure #1 is a true copy of the notes of a conference meeting on 27 August 1963. The purpose of the meeting was for the convenience of Miss Mancilla and to review personally, with Mrs. Ruth Jones her supervisor, the details of the charges in the proposed removal action. The meeting held in the presence of the Chief, Civilian Personnel Office concluded with the opinion that Miss Mancilla was fully informed of all the acts of insubordination committed by her and her errors in the work performed.
3. Inclosure #2 is a sworn affidavit of a disposition dated 15 July 1963, subject, Grace Mancilla - Personal Conduct on the Job, received from Mrs. Ruth Jones, the supervisor of Miss Grace Mancilla.

Charge I, Specification a, b, and c were initiated and are supported by the facts related in Inclosure #2. Also inclosed

are the true photostat copies submitted by the six (6) employees who signed statements confirming their observations of the insubordinate acts committed by Miss Mancilla to her supervisor, Mrs. Jones, who initiated the removal action.

4. Inclosure #3 is a sworn affidavit of a disposition dated 17 July 1963, subject, List of More Outstanding Office Disturbances Caused by Grace Mancilla Since 25 February 1963, submitted by Mrs. Ruth Jones, the supervisor.

Charge 2, Specifications a, b, c, d, and e are supported by Inclosure #3.

EXHIBIT K

Mrs. Molly H. Minudri
210 Post Street, Suite 1114
San Francisco, California 94108

Dear Mrs. Minudri:

This acknowledges your letter of November 14, 1963, concerning the appeal of Miss Grace C. Mancilla.

* * *

If, at the time of review you wish to make request for a presentation by the agency of specifically identified documents in possession of the agency, and which are pertinent to the charges upon which Miss Mancilla was removed, our representative will transmit that request to the agency. He will also transmit any request made for the presentation of particular witnesses under the authority of the agency in connection with a hearing before the Commission. Again we point out that the Commission does not have subpoena power and cannot compel the attendance of any witnesses at the hearing which it holds upon the appeal.

* * *

FOR THE DIRECTOR

Sincerely yours,

John F. Jackson
Appeals Examiner

EXHIBIT L

San Francisco, California
December 2, 1963

Director

12th U.S. Civil Service Region

I have been advised of the evidence obtained in the investigation of my appeal under Section 14 of the Veterans' Preference Act of 1944, as presented to me by a Civil Service Commission representative. I have no evidence to present in addition to that already provided.

I have been fully informed of my right to a hearing on my appeal and understand that the hearing, if requested, will be held at San Francisco, California.

My decision concerning the hearing is made of my own free will and is as follows (see note below):

I desire a formal hearing.

GRACE G. MANCILLA
(Signature)

Witness:

Robert Stricklin
Investigator
U.S. Civil Service Commission

December 5, 1963

EXHIBIT M

Mrs. Molly H. Minudri
210 Post Street, Suite 1114
San Francisco, California 94108

Dear Mrs. Minudri:

This refers to the appeal of Miss Grace C. Mancilla, whose hearing has been scheduled for the date, time and place indicated below.

The request you made to Mr. Stricklin, the Commission's Investigator, that the agency present certain specified information and documents has been transmitted to the Defense Alameda Facility. We have asked the Personnel Officer to furnish to you prior to the date of the hearing copies of the pertinent position descriptions, copies of requests for transfer submitted by Miss Mancilla, or in lieu thereof, a listing of the requests, and dates thereof, for transfer by Miss Mancilla; and copies of performance ratings for the past three years.

You are reminded that the Commission cannot require the attendance of any witnesses at its hearing, and it cannot reimburse witnesses or other parties to the appeal for expenses incurred in connection with the hearing. It is suggested, therefore, that since the responsibility for presenting witnesses at the hearing rests upon the parties to the appeal, any request that you may have for the agency to present particular witnesses should be submitted to the Personnel Officer at the Defense Alameda Facility.

FOR THE DIRECTOR

Sincerely yours,

John F. Jackson
Appeals Examiner

EXHIBIT O

UNITED STATES CIVIL SERVICE COMMISSION
SAN FRANCISCO REGION
OFFICE OF THE DIRECTOR, SAN FRANCISCO, CALIFORNIA

APPEAL OF GRACE G. MANCILLA UNDER THE PROVISIONS OF
SUBPART B, PART 22 OF THE COMMISSION'S REGULATIONS

January 3, 1964

Position: Stock Control Clerk
Agency: Defense Subsistence Supply
Agency, Alameda, California
Action Appealed: Removal
Findings: Agency Sustained
Appellant's Date
of Birth: October 27, 1914

FINDINGS AND RECOMMENDATION OF THE U.S. CIVIL SERVICE COMMISSION

* * *

APPEAL UNDER THE PROVISIONS OF SUBPART B,
PART 22 OF THE COMMISSION'S REGULATIONS

* * *

PART IV. DEVELOPMENT OF THE EVIDENCE

Investigation upon this appeal was conducted through correspondence with the appellant and agency, as initiated on October 7, 1963. Upon reviewing the assembled file on December 2, 1963, Miss Mancilla requested a hearing before a representative of the Commission. Such a hearing was held at San Francisco, California on December 16, 1963. Participating in the hearing were the appellant, her representative, and the representatives of the agency. A summary of the proceeding was prepared and the participants in the hearing indicated concurrence with the hearing summary through their signatures. A copy of the summary of hearing is attached to this analysis and decision.

PART V. THE CHARGES AND ANALYSIS OF THE EVIDENCE.

Appellant's removal was based upon two charges, Insubordination and Inefficiency. * * *

Appellant denied the accusations in Specifications a. and b., and also denied the accusation in Specification c. alleging that there had been previous instances when she had been insubordinate to her supervisor. Appellant contended that there was no justifiable basis for any complaint by her fellow workers that she had been disruptive or that she had adversely affected the work production and morale of her associates. It was appellant's contention that she was amenable to supervision and that she did not act in a rude and loud manner when addressing her supervisor in connection with the incidents of 12 July 1963. Appellant also denied slamming papers on her supervisor's desk and of striking her supervisor. The representations by Miss Mancilla were that the conduct charged against her should more properly have been charged against the supervisor.

In support of the charges, the appeal file contains statements by six of appellant's fellow employees and also the testimony of the supervisor, Mrs. Ruth Jones. Our review shows that each of the contentions presented in the specifications is supported by statements of several witnesses. Based upon a preponderance of evidence, we find that specifications a., b., and c., under Charge 1 are sustained. In finding that the

agency has proved specific instances wherein appellant refused to obey orders, berated her supervisor when the latter attempted to counsel her, struck her supervisor and slammed work upon the desk of her supervisor, and acted in a manner resulting in complaints from fellow employees, it follows that the charge of Insubordination must be sustained.

Under Charge 2, Inefficiency, there were set forth in the advance notice of proposed removal seven specifications of duty deficiencies. The items are numbered specifications a through g, and the period of time included is from 21 February 1963 through 10 June 1963. While in some instances the specifications were set forth in considerable length and involved multiple alleged deficiencies in Miss Mancilla's work or attitude, the principal deficiencies are summarized as follows: Specification a related to errors in assembling Voucher Receiving Reports submitted to the Requirements and Control Branch, which were returned for correction of errors (four examples supplied); Specification b concerned errors in postings made by appellant to a register that she maintained, misfiling of folders, and posting receiving report voucher numbers to the wrong purchase order entries; Specification c concerned inability of appellant to locate the proper number of priced copies of certain receiving reports (four examples supplied) and refusal to comply with the supervisor's instructions to properly assemble receiving reports; Specification d concerned errors in filing and posting particularly with reference to purchase orders; Specification e related to an incident wherein

appellant was alleged to have refused to follow the instructions of her supervisor in accomplishing her filing work at the filing desk located in front of appellant's control desk, and of also declining to accept the supervisor's instructions as to where the registers would be maintained; Specification f concerned appellant's alleged errors in failing to recognize and forward priced copies of the Receiving Reports for Capital Funds, resulting in the request from other Regional Headquarters that the copies be furnished (ten examples supplied); and Specification g alleged that appellant failed to make required entries in her register for two warehouse tallies which were received, and of filing the warehouse tallies in the respective purchase order folders under the scheduled delivery date, with the result that they were not located except by chance more than two weeks later (the two warehouse tallies being furnished as exhibits).

Repeated throughout the presentation of the specifications above are contentions that appellant refused to accept constructive criticism, refused to acknowledge errors even when in her own handwriting, insisted that she would work on her own terms and would not listen to the advice and counsel by her supervisor, and that she was uncooperative as evidenced by her attitude and her work performance.

Many of the specifications are supported by exhibits of the actual work, as we have noted above. Others are supported by written records prepared by the supervisor, Mrs. Ruth Jones, at the time of the incident. All accusations are backed by sworn testimony of Mrs. Ruth Jones.

It has been brought out by appellant's representative that some of the procedures involved are not delineated in appellant's job description. However, appellant cannot be excused of errors on the basis that her job description does not cover in minute detail all aspects of appellant's duties, and the specific procedures applicable to carrying out those duties. At various times appellant has contended that she was not given proper instructions on how to carry out her job assignment, and at other times it has been contended by appellant, and in her behalf, that Miss Mancilla was given no opportunity or organize her own work but was required to perform in compliance with someone else's ideas on how the job should be run. Miss Mancilla submitted for the record a large number of what she described as "unpleasant notes" received from her supervisor. This was for the purpose of showing that appellant's supervisor, Mrs. Jones, felt personal animosity toward Miss Mancilla. After receiving these notes, we cannot agree with the conclusion drawn by Miss Mancilla; however, the notes do reflect that Mrs. Jones found many errors and shortcomings in appellant's work, including the same, or similar, errors which are involved in the present specifications. It was appellant's contention that her working relations with her supervisor were so unpleasant that she sought every means of getting a transfer from the section, and in this connection she furnished a number of documents reflecting such attempts. Our review shows that in each and every case where transfer was sought it was for the purpose apparently of securing a promotion. It is also noted that in the letter to the Personnel Officer appellant specifically indicated that she was not interested in a transfer.

With respect to the substantive matters involved in Specifications a through g under Charge 2, appellant has denied all accusations, with the exception of one or two items, which she indicated she could not remember. Appellant contended that errors attributed to her were made by others, or that any error for which she was responsible was due to inadequate and poor instructions from her supervisor.

After careful review of the entire record, we can find no reasonable basis for believing that the deficiencies with which appellant has been charged were not in fact her own. Neither do we find that the extenuating circumstances claimed by Miss Mancilla were such as to justify her unsatisfactory performance of duty. On the contrary, the record indicates that appellant resisted efforts by her supervisor to assist her in performing the duties of her job in a proper and satisfactory manner. Specifications a through g under charge No. 2 are sustained, and upon those instances of unsatisfactory accomplishment of the duties encompassed in her position of Stock Control Clerk, we find that the charge of Inefficiency is sustained.

PART VI. FINDINGS AND RECOMMENDATIONS

In review, we find that all procedural requirements were met by the agency in effecting the removal of Miss Mancilla.

On substantive grounds, we find that the action was taken for such cause as will promote the efficiency of the service. For these reasons, we find that the removal of Miss Mancilla should be sustained.

* * *

Since there is no right to a further hearing, all representations should be submitted in duplicate with the appeal to the Board

Asa T. Briley
Director

EXHIBIT O-1

SUMMARY REPORT OF HEARING
PART 22B APPEAL OF
GRACE G. MANCILLA

Date of Hearing: December 16, 1963
Place of Hearing: San Francisco, California
Persons Present at Hearing:

(a) For the Commission:

Mr. Warren G. Tann, Hearing Officer

(b) For the Appellant:

Miss Grace G. Mancilla, Appellant

Mrs. Molly Minudri, Appellant's Representative

Mrs. Blanche Arnold, Witness

(c) For the Agency:

Mr. R. J. Lindsay, Agency Representative

Commander Kenneth M. Ross, Agency Representative

Mr. Lee R. Thibodeau, Witness

Mrs. Ruth Jones, Witness

Mr. Tann made a preliminary statement concerning the procedures to be followed; advised that a summarization of the hearing would be prepared; administered the oath; and invited appellant's representative to proceed.

In her opening remarks Mrs. Minudri stated that the action stemmed from charges by the immediate supervisor culminating from an incident of 12 July 1963.

Objection is made to inclusion in the record of the unsworn statements in the file on the basis it is not known whether or not they were written for the witnesses by someone else, or what pressures may have been brought to bear; it is also objected that a piece of paper cannot be cross-examined.

Objection is also made to any reference to Mrs. Mancilla's being sent to IBM school since it is believed that the conclusions reached that she failed to accomplish in connection therewith are incompetent, irrelevant and immaterial. Mrs. Mancilla was employed as Stock Control Clerk, GS-3 with the promise that she would have opportunity to go into the position of General Clerk (Steno) which was the position she was examined for; that without any past experience or ability along those lines she was placed in the position of Stock Control Clerk, a very demanding and technical job, and one with a very heavy work load.

In continuation, Mrs. Minudri stated that we have requested information from the agency concerning the overall work of Mrs. Mancilla's particular division and how the work was assigned to her, a job in which others did work, such as filing, and for whose errors Mrs. Mancilla was held accountable, but that this information has not been supplied by the agency. Mrs. Mancilla had no opportunity to organize her work but had to perform in compliance with someone else's ideas of how the job should be run. Appellant tried to get transfers out of this section.

Per Mrs. Minudri, appellant denies that she committed the errors attributed to her or that she struck her supervisor as charged.

At no time did she attempt or want to be insubordinate. In her behalf it will be shown thru testimony of a former fellow worker that she had a good disposition and is easy to work with.

Mrs. Minudri stated that there was constant turmoil in this particular Center and in relation to this particular work the difficulty that developed between the two women is not entirely Mrs. Mancilla's fault. While courtesy to a supervisor is required, an employee should not be expected to submit to unreasonable and arbitrary demands. The supervisor in this case perhaps also was harrassed and had more work than she could do. These things give rise to conditions not conducive to good relations between parties who work together.

Mrs. Minudri objected to inclusion of anything in the record predating the time that Mrs. Jones took over as supervisor (established to be February 21, 1963). Included in this incompetent, irrelevant and immaterial information is a reprimand among other things.

Re specification a under charge 1, Mrs. Minudri questioned Mrs. Jones on alleged "properly given instructions" and Mrs. Jones explained that the instructions were hers (Mrs. Jones) given to Mrs. Mancilla in writing on the outside of the folders requesting her to make the erasures in the registers relating to duplicate entries. As to who made the duplicate files, Mrs. Mancilla did. It is not proper procedure to make duplicate files; the incidental papers for which these duplicates were made should be incorporated in the basic file.

There were approximately 30 of these duplicate files spread over a period of several weeks, pertaining to vouchers in June and July. Mrs. Jones related that the initial documents upon which a file is prepared is the purchase order; the file is set up according to the last two digits is the purchase order placed in the upper right hand corner for control purposes. Once completed the filing is based upon the voucher number; subsequent papers that come in are given the debit voucher number and appended to the file.

To question by Mrs. Minudri, Mrs. Jones stated that the control desk (Mrs. Mancilla's) initiates the papers on cases; that once a case is logged in the folder is placed in the suspense file in a special cabinet; that only on very rare occasions are these folders ever removed from this file; that "miscellaneous" papers are received covering the finished cases, which when closed are sent out to various places. Mrs. Jones stated that the miscellaneous papers have the purchase order number on them; that she (Mrs. Jones) circles the purchase order number and puts the papers in the "in" basket on the control desk (Mrs. Mancilla's) where appellant is supposed to consult the proper register to link the papers with the file; that there are 4 registers in all; that if she found that the file was completed she identified it with the proper voucher number in order to ultimately attach these miscellaneous papers to the file; that she should not have prepared duplicate files in such instances as this clogs the books. When it is determined that this is a duplicate it has to be removed and the information incorporated in the proper

folder. Asked if it is customary to make pencilled entries, Mrs. Jones said--yes--but only in such cases where the initial purchase request is a telegram or some other communication, and not the actual purchase order itself; that when there is a purchase order, it is wrong to make a pencilled entry.

To further questions by Mrs. Minudri, Mrs. Jones stated that other clerks (processing clerks) in addition to Mrs. Mancilla did look through this material in the control desk incoming basket, and this for the purpose of looking for telegrams and other information pertinent to processing; that it is immaterial to Mrs. Mancilla's job on the control desk whether the voucher folders were or were not in the files in Mrs. Mancilla's office; that if the files were not on hand but were in the shipping department or somewhere else, the "incidental" or "miscellaneous" papers should be placed in a file basket awaiting return of the pertinent folders; that she had discussed this procedure with Mrs. Mancilla several times.

Asked whether there is a specific written statement of procedure in this matter, Mrs. Jones stated that Mrs. Mancilla was given oral instructions many times on this procedure, but that she (Mrs. Jones) knows of no written description of the procedure. Asked how she knows that Mrs. Mancilla knew the procedure for holding miscellaneous papers and later attaching these papers as the vouchers appeared, Mrs. Jones said Mrs. Mancilla had been doing this job for a long time and that had been instructed on the procedures by both her and Mrs. Mancilla's previous supervisor. To further question Mrs. Jones stated that the

entries made in the registers were normally made by Mrs. Mancilla, but were occasionally made by her (Mrs. Jones), and also by Mrs. Morris, when Mrs. Mancilla was taken off the control desk.

Asked if she had not counseled Mrs. Mancilla about the backlog of filing, Mrs. Jones said--yes she had.

To question by Mrs. Minudri, Mrs. Jones explained that there are two types of files--one a formal file established when the purchase order has been received and a "suspense" file when the actual Purchase Order has not been received; that in the latter case the entries are made in pencil and later written over in ink when the Purchase Order is received.

Mrs. Minudri then questioned Mrs. Jones as to the meaning of certain functions set forth in Mrs. Mancilla's job description.

Under further questioning by Mrs. Minudri, Mrs. Jones explained that after a receiving report has been typed, an original and a signed copy are transmitted to the Finance & Accounting section; the third copy is the Receiving Branch's permanent record; the Receiving Branch's voucher copy goes to the Shipping Branch together with lot cards; it is kept there until the shipping people are through with it then is sent over to Requirements & Control for funding; it then flows from there back to the file desk in front of the Control desk; here it is checked off against the voucher numbers in the registers and is filed.

Asked why the miscellaneous papers are placed on Miss Mancilla's desk when Miss Mancilla had completed^{her}/part of the operation,

Mrs. Jones stated that it is Miss Mancilla's job to check the registers to determine the status of the particular purchase order and to dispose of the papers. Mrs. Minudri presented copy of job outline pertaining to Miss Mancilla's position, noting that this procedure is not described in the position description. (It was stipulated that this job description was issued to Miss Mancilla on May 14, 1963). Mrs. Minudri stated it appeared that the method used by Miss Mancilla in handling miscellaneous papers was a reasonable and logical one, in lieu of having to check frequently and regularly to determine if the folders had come back. Mrs. Minudri stated there is nothing to show that there were ever "properly given instructions" regarding the matters contained in specification a of charge 1.

To questions by her representative, Mrs. Mancilla stated that re July 12 she received a note from Mrs. Jones to take out pencilled entries on the vouchers; that all the entries were not in her handwriting; that a few of them were that she approached Mrs. Jones and advised her that all the errors were not hers and asked if there were some other way to make the adjustments desired; that the pencilled entries she made re the miscellaneous papers were in accordance with practice as she understood it; that she had not been advised otherwise concerning procedure for handling papers which "straggle" in after the voucher had been made up; that with respect to each and every pencilled entry at issue re incident July 12, she had not checked to see if the vouchers had been completed;

that when she questioned Mrs. Jones, Mrs. Jones snatched the papers out of her hand and took them to Mr. Thibodeau. Appellant responded to question by her representative that she did not insubordinate in the manner described in the charge; that Mrs. Jones was frequently very critical and wrote unpleasant "notes" in pointing out alleged errors; that she had tried to talk to Mrs. Jones about more efficient ways to do the work, but the latter would not listen, and insisted she would not descend to appellant's level in this regard.

Mrs. Minudri submitted in evidence a number of "notes" by Mrs. Jones to Miss Mancilla. (accepted as hearing exhibit #2).

To question by Mrs. Minudri, Miss Mancilla stated that other clerks on control desks also used the same type of suspense file that she made; and also made penciled and ink entries on the registers as she was accused of doing. Mrs. Jones denied this was done. Appellant stated it is very easy to make duplicate entries when one is in a hurry and has a lot of work to perform. Appellant stated she checked the folder referred to in specification a of charge 1 and determined that most of the pencilled entries were made by others.

Asked by Cdr. Ross how long she had been assigned to the Receiving Section, appellant answered approximately 3 years. To further questions, appellant stated that she received very little instructions on how to do the job; that she had to work out the job on her own; that she had to find answers from other employees in the section; that she never took the matter to Mr. Thibodeau but

that she had on many occasions gone to Mr. Lindsay, the personnel officer, to complain of inadequacy of instruction; that she recalled talking to Cdr. Ross only on one occasion in this regard; that maybe she talked to him one other time also when Mrs. Williams was her supervisor; that she complained to Cdr. Ross of the relations with her supervisor.

Mrs. Jones responded to contentions by appellant and her representative specification a, Charge 1, in stating that the errors alluded to were, in fact, in Miss Mancilla's handwriting.

Re specification b, Charge 1, Mrs. Jones, when questioned as to where appellant struck her, stated it was on the back of her hand; that it resulted in a discoloration and stung for sometime.

Miss Mancilla stated that she did not strike Mrs. Jones but may have accidentally touched her finger when reaching across the desk to pick up some folders; that Mrs. Jones got angry when appellant placed some folders on her desk and accused her of slamming the folders on her desk. Appellant denied that she slammed the Shipping Ticket Registers on Mrs. Jones' desk or that she recalls telling Mrs. Jones "oh, be still". Miss Mancilla stated she left Mrs. Jones' desk stating that she was going to Civilian Personnel to tell what happened, after Mrs. Jones accused her of hitting her, and that she did go to the personnel office. Appellant states she had never been violent toward Mrs. Jones.

Cdr. Ross asked Miss Mancilla if there wasn't a conversation about her excitable nature in prior instances concerning both Mrs. Williams and Mrs. Jones, to which Miss Mancilla responded-- No--she does not recall any such discussion. Cdr. Ross questioned Mr. Lindsay who stated that it was pretty clearly established in a conversation in the Civilian Personnel Office that this type of conflict between the employee and the supervisor existed and the decision was reached that this could not be tolerated; that in his office (Mr. Lindsay's) Cdr. Ross specifically counseled Mrs. Mancilla that she would have to control her temper.

To question by Mrs. Minudri, Cdr. Ross stated he had never personally seen Miss Mancilla lose her temper; that she was never in the environs at such times; that she had talked to Miss Mancilla and to Mrs. Jones individually; that his knowledge of the type of conduct charged to appellant is based on information from Mr. Thibodeau and Mrs. Jones.

Mrs. Minudri moved that specification c, of charge 1, be stricken on the grounds that the persons alluded to are not here to testify, and also the charge is complete hearsay.

Re specification a of charge 2, Mrs. Minudri referred to exhibit B and questioned Mrs. Jones as to the proper procedure. Re Exhibit C Mrs. Jones said this item, as well as Exhibit B, was improperly assembled. To question by Mrs. Minudri if this doesn't refer to errors before receipt by appellant on 5/14 of her job description which outlines the procedure, Mrs. Jones said--yes, but that Miss Mancilla had been doing this work since December 26, 1962

Appellant stated she doesn't recall these particular exhibits and doesn't know that it is her own work, but it could have resulted from the documents being delivered to her late in the afternoon, when on such occasions she was unable to complete them that day, and sometimes left them for Mrs. Jones to do. Mrs. Jones stated that appellant did approximately 50 of this type of documents per day; that this would be done in late afternoon; that if there were a great many to do, she (Mrs. Jones) helped by doing "Outside Market Centers" so that appellant wouldn't have to stay late. Mrs. Jones, to question, stated that these particular items were done by Miss Mancilla.

Re specification b, Charge 2, Mrs. Minudri stated there is no supporting evidence for this charge, and moves that the charge be eliminated as general in character.

Re specification c, Charge 2, Mrs. Jones explained that the exhibits include DSSC Form 300 (which is the Purchase Order), Form 300-2 (which is the Receiving Report, and which is on the back of the Purchase Order) and Form 300-1 (which is a continuation of the Form 300 (the Purchase Order)). Asked if she had ever previously advised appellant that the proper number of priced copies in multiple pricing would be found on the last page, Mrs. Jones said--yes--she had told Miss Mancilla of this previously. To further question by Mrs. Minudri, Mrs. Jones stated that when she gave appellant instructions she did not use a dictatorial tone. Appellant responded that Mrs. Jones did not talk to her in a nice way on this occasion; that

she said "Helen Gamble (identified as the processing clerk) does not make errors, so get with it." Appellant responded that she had seen work improperly put together by the processing clerk.

Questioned by Cdr. Ross if on this day she did not talk to the Chief, Requirements and Control, Mrs. Mancilla said no, not on that particular day. Cdr. Ross stated he saw Miss Mancilla talking to Mr. Chew, Chief of the Requirement and Control, concerning this incident; and that while he did not overhear the conversation he did talk with Mr. Chew later about what had transpired. Appellant denied she discussed this matter with Mr. Chew, and to question as to what her conversation with Mr. Chew was concerned with, stated she did not recall what she may have discussed with Mr. Chew on the day in question.

Re specification d of Charge 2, Mrs. Jones responded to Mrs. Minudri that "Pier 4" items involve direct delivery to the piers; that these items require special handling. Asked how many Pier 4 ASD's she handled, Miss Mancilla stated she did not handle very many. To appellant's statement that the purchase orders were supposed to go in the file, Mrs. Jones replied that they were not supposed to go in the files, and that she had pointed this out to appellant, and specifically recalls doing so on one occasion when she (Mrs. Jones) caught 4 or 5 of these in a row that had been filed by appellant. Appellant stated she does not recall this incident.

Re specification 3, Charge 2, Mrs. Jones stated that the incident was on one of those occasions when because of a large amount of filing, she relieved Miss Mancilla of control desk duties so that she could do the filing, but that the problem arose as described in the charge in this particular instance; that on prior occasions Miss Mancilla had not made an issue of this procedure. Appellant denied that her supervisor instructed her to do the filing at the filing desk but stated she just told her to do the filing. Appellant denied that her supervisor told her that she would relieve her at the control desk. Appellant stated that she was not given proper instructions as to where she was to sit. Mrs. Jones stated that she did, in fact, instruct her where to sit, to which Mrs. Mancilla responded that she had no knowledge of where her supervisor wanted her to sit. Mrs. Jones stated that she told Miss Mancilla several times that she should sit at the filing desk as she (Miss Mancilla) always had done in the past in such instances and that Mrs. Mancilla refused to comply.

Miss Mancilla stated she had previously received a memorandum from Mr. Thibodeau concerning her place to sit. Agency submitted a copy of this, the memorandum in question, which was accepted as Hearing Exhibit #3. Mr. Thibodeau said this memorandum was concerned with another matter, not the matter at issue in the present charge.

Re specification f, Charge 2, Miss Mancilla examined the exhibit presented in support of the charge, and stated she cannot determine upon this examination whether these items are "Capital Fund" copies. Asked how she could determine these were Miss

Mancilla's errors, Mrs. Jones said she attributes these to Miss Mancilla because on those days appellant was on the control desk and would have done this work. Mrs. Jones stated the backlog on filing is done between the 7th and 10th of the month; that then she (Mrs. Jones) sometimes takes over the control desk to relieve Miss Mancilla for filing, that on this particular occasion she (Mrs. Jones) brought to Miss Mancilla's attention that these were capital fund copies, which Miss Mancilla denied, but which later were determined to be Capital Fund copies. Miss Mancilla stated she had been doing this stripping for a long time, and while she cannot remember this specific instance, can see no reason why she would suddenly do it wrong, a type of work which is routine and not complicated.

Re specification g, Charge 2, appellant, to questions, stated that according to her information Mrs. Williams placed the warehouse tallies in the Purchase Order folders. Mrs. Jones, to question, agreed that she was not appellant's supervisor at this particular time. Mrs. Jones stated she was, however, the person who later found the items. Mrs. Minudri moved that this charge be stricken as hearsay. Cdr. Ross referring to paragraph 5 of charge letter, which Mrs. Minudri had characterized as irrelevant stated this matter is germane since cuts were forthcoming in the receiving branch and retraining in other work for this personnel was necessary.

Mrs. Minudri submitted correspondence and data re attempts by Miss Mancilla to secure transfers since she was not happy in her work situation.

Accepted as hearing exhibit #4. Mrs. Minudri stated that Miss Mancilla, upon going to work for this agency, was promised that within 3 months she would be given an opportunity to be considered for a job of Clerk (Stenography); that this did not materialize. Appellant stated she hired in with the agency as a clerk-typist because there were no openings for Clerk (Stenography). Appellant stated she had not in her other jobs in Federal Service (15 years in all) had any problems.

Mr. Lindsay, to question by Cdr. Ross as to whether there were a general demand for Clerk (Steno), said--no--not in his organization.

To question by Cdr. Ross, Miss Mancilla stated she applied for the steno type jobs indicated in hearing exhibit #4 but had not been selected; that no one had objected to her applying for the jobs though. Appellant stated that she was actually hired as clerk-typist by this agency.

Mr. Ross stated the job of clerk-typist that Miss Mancilla had worked at required only 10% typing with the remainder of the job being general clerical duties.

Mrs. Arnold, questioned by Mrs. Minudri, stated she worked with Miss Mancilla for approximately 2 years with Records Accomplishment, Oakland Army Base, during the period from approximately

1959 to 1961, and that she worked in close proximity to Miss Mancilla; that she had lunch with appellant every day; that she never saw any arguments or altercations between Miss Mancilla and co-workers or supervisors; that Miss Mancilla was well liked and accepted; that she had kept up her friendship with Miss Mancilla; that she has never noted her to be emotionally disturbed or to have a violent or quick temper and never saw her go into any tirades in connection with her work or work associates.

To question by Cdr. Ross, Mrs. Arnold stated that she did not know the reasons for Miss Mancilla's leaving the job with Oakland Army Base, and does not know specifically all the work that Miss Mancilla did there, but that it involved a great deal of typing; that she does not know what Miss Mancilla's efficiency ratings were.

All information and evidence having been submitted by the parties, the hearing officer closed the hearing.

EXHIBIT O-2

Warren G. Tann
Hearing Officer

STATEMENT OF AGREEMENT WITH HEARING SUMMARY

I have heard read to me the summary of hearing and have been

offered opportunity to make additions, deletions and changes. I agree the summary fairly reflects the matters brought out in the hearing.

/s/ Grace G. Mancilla
Appellant

/s/ Molly H. Minudri
Appellant's Representative

/s/ Kenneth M. Ross LCDR USN
Agency Representative

/s/ R. J. Lindsay
Agency Representative

EXHIBIT R

July 15, 1964

Mrs. Molly H. Minudri
Attorney at Law
210 Post Street, Suite 1114
San Francisco, California 54108

Dear Mrs. Minudri:

Reference is made to your appeal in behalf of Miss Grace G. Mancilla from the decision of the Commission's San Francisco Office which sustained, under part 22 B (now 752B) of the Commission's regulations, her removal from the position of Stock Control Clerk, GS-3, \$4500 per annum, effective September 30, 1963, by the Commanding Officer, Defense Subsistence Supply Agency, Alameda, California on charges of Insubordination and inefficiency.

The Board of Appeals and Review has fully considered the entire appellate record in Miss Mancilla's case, including all information developed during the processing of the appeal in the Regional Office, the testimony given at the hearing held

on December 16, 1963, and all representations submitted subsequent to the Regional decision.

In its decision, the Regional Office held that all the procedural requirements had been met by the agency in effecting Miss Mancilla's removal. On the merits, the Regional Office found that all specifications shown under Charge 1, insubordination, and all specifications shown under Charge 2, inefficiency, were supported by a preponderance of the credible evidence. Having found these charges sustained, the Regional Office concluded that the removal was warranted and that it had been taken for such cause as would promote the efficiency of the service.

* * *

The basic issues in this appeal are whether Miss Mancilla failed to carry out the instructions of the supervisor and whether her performance was of such caliber as to be classified as inefficient.

You also contend that the admission and consideration of unsworn affidavits of fellow employees is a reversible error. It is argued that the employees should have been given an opportunity to cross-examine them at the Commission hearing.

A review of the appellate record shows that you were properly advised that the Commission has no power of subpoena and could not force the attendance of witnesses. However, in response to your statement in your letter of November 14, 1963, that you would furnish the Commission with a list of witnesses, you were advised by letter of November 20, 1963, that the Commission

representative would transmit to the agency such request for the presentation of any particular witnesses providing those persons were still under the authority and control of the agency. From the record, it is apparent that you failed to respond to the invitation to obtain the assistance of a Commission representative in the production of witnesses.

In your appellate brief, you also state that you made a timely request to the agency for the production of these witnesses and that you were informed the day before the hearing that the agency would not order the employees to serve as witnesses but that Miss Mancilla could ask such employees to come in on a voluntary basis and time off would be granted to such employees. You argue that this information came too late, that the request could not be made until the morning of the hearing and that all employees declined to appear.

While it is somewhat repetitious, it must again be emphasized that under the agency's and the Commission's regulations it is the responsibility of the parties to the appeal to produce their own witnesses. In this connection, the agency fulfilled its responsibility by stating that it would grant the time off for any employee who would voluntarily appear. Failure on the part of Miss Mancilla to produce witnesses cannot be considered as an overriding factor sufficient to vitiate the agency action.

Finally, you argue against the weight and credibility of the evidence submitted by the agency in support of the charges, particularly the unsworn statements of her co-workers. The

Board recognizes that it is, of course, desirable to have such evidence under oath. Nevertheless, unsworn statements are acceptable and given such weight as they deserve particularly in a case such as this where the statements are used to supplement or corroborate other evidence.

In view of the foregoing and after considering all the facts and circumstances of the case, the Board finds, as did the Regional Office, that the agency complied with all the procedural requirements of the law and regulations in effecting Miss Mancilla's removal. As to the merits, the Board concurs in the Regional Office analysis of the evidence and the findings that all the specifications under Charge 1, insubordination, and all the specifications under Charge 2, inefficiency, are substantiated by a preponderance of the credible evidence and are sustained.

On the strength of the sustained charges, the Board has concluded that Miss Mancilla's removal was warranted; that it was effected for such cause as will promote the efficiency of the service within the meaning of that language in the law and regulations, and that the decision to effect removal rather than take some lesser disciplinary action was not unreasonable, arbitrary or capricious. Accordingly, the decision of the Regional Office of which you were notified on January 3, 1964, is hereby affirmed.

For the Commissioners:

Sincerely yours,

E. T. Croark
Chairman, Board of Appeals
and Review

